78-450

No.

In the Supreme Court of the United States

OCTOBER TERM, 1978

UNITED STATES OF AMERICA, PETITIONER

v.

ST. LOUIS-SAN FRANCISCO RAILWAY CO.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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CITATIONS

273-526—78——1

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The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*) is reported at 572 F. 2d 1224. The opinion of the district court (App. D, *infra*) is reported at 431 F. Supp. 735.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*) was entered on March 1, 1978. A timely petition for rehearing was denied on April 18, 1978 (App. C, *infra*). On July 10, 1978, Mr. Justice Blackmun extended the time for filing a petition for a writ of certiorari to and including August 16, 1978. On August 11, 1978, Mr. Justice Blackmun further extended the time for filing the petition to and including Sep-

tember 15, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a place on a rail line at which railroad employees are temporarily released from duty can constitute a "designated terminal" within the meaning of the Hours of Service Act, 45 U.S.C. 61 *et seq.*, if it has not been designated as the home or away-from-home terminal or other point of release for a particular crew assignment in the applicable collective bargaining agreement.

STATUTE INVOLVED

The Hours of Service Act, 45 U.S.C. 61–64b, as amended, Pub. L. 94–348, 90 Stat. 818, provides in pertinent part:

> *§ 61. Carriers subject to provisions of sections 61 to 64b of this title; definitions; time on duty.*
>
> * * * * * *
>
> (b) For the purposes of sections 61 to 64b of this title—
>
> * * * * * *
>
> (2) The term "employee" means an individual actually engaged in or connected with the movement of any train, including hostlers.
>
> (3) Time on duty shall commence when an employee reports for duty and terminate when the employee is finally released from duty, and shall include:
>
> (A) Interim periods available for rest at other than a designated terminal;

> (B) Interim periods available for less than four hours rest at a designated terminal;
>
> (C) Time spent in deadhead transportation by an employee to a duty assignment: *Provided,* That time spent in deadhead transportation by an employee from duty to his point of final release shall not be counted in computing time off duty;
>
> (D) The time an employee is actually engaged in or connected with the movement of any train; and
>
> (E) Such period of time as is otherwise provided by these sections 61 to 64b of this title.
>
> *§ 62. Employees' hours of service.*
>
> (a) *Limitations.*
>
> It shall be unlawful for any common carrier, its officers or agents, subject to sections 61 to 64b of this title—
>
> (1) to require or permit an employee, in case such employee shall have been continuously on duty for fourteen hours, to continue on duty or to go on duty until he has had at least ten consecutive hours off duty, except that, effective upon the expiration of the two-year period beginning on the effective date of this paragraph, such fourteen-hour period shall be reduced to twelve hours;
>
> (2) to require or permit an employee to continue on duty or to go on duty when he has not had at least eight consecutive hours off duty during the preceding twenty-four hours.

* * * * *

§ 64a. Manner of enforcement of sections 61 to 64b of this title.

(a) *Penalty; suits therefor; statute of limitations.*

Any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty in violation of section 62, section 63 or section 63a of this title shall be liable to a penalty of $500 for each and every violation, to be recovered in a suit or suits to be brought by the United States attorney in the district court of the United States having jurisdiction in the locality where such violations shall have been committed; and it shall be the duty of such United States attorney to bring such suit upon satisfactory information being lodged with him; but no such suit shall be brought after the expiration of two years from the date of such violation.

(b) *Duty of Secretary of Transportation.*

It shall be the duty of the Secretary of Transportation to lodge with the appropriate United States attorney information of any violation as may come to the knowledge of the Secretary.

(c) *Knowledge imputed to carrier.*

In all prosecutions under sections 61 to 64b of this title the common carrier shall be deemed

to have knowledge of all acts of all its officers and agents.

(d) *Exceptions from operation.*

The provisions of section 61 to 64b of this title shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of the employee at the time said employee left a terminal, and which could not have been foreseen.

* * * * *

§ 64b. Enforcement by Secretary of Transportation.

It shall be the duty of the Secretary of Transportation to carry out the provisions of sections 61 to 64b of this title.

STATEMENT

The United States instituted this action in the United States District Court for the Eastern District of Missouri to recover statutory penalties from the respondent for violations of the railroad Hours of Service Act, 45 U.S.C. 61 *et seq.*[1] Following the filing of cross-motions for summary judgment on stip-

[1] Each instance in which a railroad permits an employee to remain on duty in excess of the statutory maximum number of hours constitutes a separate violation and subjects the employer to a penalty of $500. 45 U.S.C. 64a(a). The parties agreed to settlement of all but four of the 33 violations initially alleged in the complaint.

ulated facts, the district court dismissed the suit (App. D, *infra*), and the court of appeals affirmed (App A, *infra*).

1. The stipulated facts showed that at 6 a.m. on the morning of November 16, 1973, a four-man crew of the St. Louis-San Francisco Railway Company (the "Frisco") reported for duty at their "home terminal" of Chaffee, Missouri (App. D, *infra,* p. 13A). The four—a conductor, two brakemen, and an engineer—left Chaffee at 8:00 a.m. on train No. 822 bound for St. Louis, the "away-from-home terminal" for the crew. Ordinarily the 138-mile trip from Chaffee north to St. Louis takes approximately five hours (*ibid.*).

When the train arrived at Crystal City, Missouri, approximately 33 miles south of St. Louis, the crew received orders to hold the train there because of congestion at the St. Louis terminal. At 11:45 a.m., the crew was released from duty at Crystal City where, according to the stipulation, adequate facilities for food and lodging were available. This release period extended to 9:00 p.m., when the crew was recalled to duty to resume the trip. They departed Crystal City at 10:50 p.m. and proceeded northward to the Lindenwood Yards in St. Louis, where they arrived after midnight. They were finally released from duty at 1:25 a.m., more than 19 hours after they had gone on duty at the start of the run (*id.* at 13A).

The United Transportation Union, which represented three of the crewmen,[2] subsequently filed a complaint with the Federal Railroad Administration, an agency within the Department of Transportation (*id.* at 15A). After an investigation by the agency, the government filed suit against the Frisco in the United States District Court for the Eastern District of Missouri. The complaint charged the Frisco with violating Section 2(a) of the Hours of Service Act, 45 U.S.C. 62(a), by permitting the four crewmen to remain on duty for more than 12 hours without at least a four-hour rest break at a "designated terminal."

2. The Hours of Service Act is intended to promote rail safety by restricting the maximum number of hours rail crews can remain on duty without a rest. The Act makes it unlawful, except in unusual circumstances, for a railroad to require or permit any employee who is engaged in or connected with the movement of a train to remain on duty continuously for more than 12 hours. 45 U.S.C. 62(a)(1).[3] The statute includes within the definition of time on duty all interim periods of release at places other than a "designated terminal," and also includes any interim period of release of less than four hours at a "desig-

[2] The United Transportation Union represented the conductor and the two brakemen. The Brotherhood of Locomotive Engineers represented the engineer (App. D, *infra*, p. 15A).

[3] For the two-year period following December 26, 1970, the maximum period of continuous duty was 14 hours. Since that time, the maximum period has been 12 hours.

nated terminal." 45 U.S.C. 61(b)(3)(B).[4] The statute does not define the term "designated terminal."

The only issue in serious dispute before the district court was whether Crystal City was a "designated terminal" within the meaning of the Hours of Service Act. The stipulated facts established that although Crystal City served as a home or away-from-home terminal for at least one other Frisco train crew assignment at the time (App. D, *infra*, p. 14A, 17A), it was not designated in the collective bargaining agreements with the Frisco as the home or away-from-home terminal for this crew assignment or for any crew assignment on the Chaffee to St. Louis run. Therefore, the government argued, Crystal City was not a "designated terminal" for that crew, and the release of the crew at Crystal City did not toll the running of the crew's time on duty for purposes of the Hours of Service Act. The railroad argued that Crystal City constituted a designated terminal because it was an interim point on the run and had suitable food and lodging accommodations.

The district court ruled that since adequate food and lodging was available at Crystal City, and since "it is abundantly clear that the crew was satisfied

[4] The Act further provides that an employee who has been on duty for 12 hours must not continue on duty until he has had at least 10 consecutive hours off duty, and that an employee must not continue on duty or go on duty if he has not had at least eight consecutive hours off duty during the preceding 24 hours. 45 U.S.C. 62(a)(1) and (2). These computations, like the 12-hour continuous duty limitation involved here, are dependent upon the meaning of the term "designated terminal."

with the terms and conditions of their stay at Crystal City," Crystal City was a designated terminal within the meaning of the Act (App. D, *infra*, p. 21A).[5] Accordingly, the district court found that the nine hours and fifteen minutes of released time the crew spent in Crystal City did not count as hours on duty, and that the railroad therefore did not violate the Hours of Service Act.

The court of appeals affirmed (App. A, *infra*). While it concluded that the legislative history was unclear as to the meaning of the term "designated terminal," the court noted that the Senate Report on the bill, S. Rep. No. 91-604, 91st Cong., 1st Sess. 8 (1969), had stated that a designated terminal should be "[a]s a minimum * * * a place where suitable food and lodging are available for employees" (*id.* at 7A-8A). In addition, the court noted that Congress had contemplated that "designated terminals" would be places for "interim periods" of rest. Since Crystal City had suitable food and lodging facilities, and since it was located at an "interim" point between

[5] The government filed a motion for reconsideration or amendment of the court's findings of fact and conclusions of law, arguing that the court's conclusion that the crew was satisfied with the terms and conditions of its stay in Crystal City was without support in the record and was in fact largely rebutted by the complaint filed on behalf of the crew members by their union. The motion was denied.

Chaffee and St. Louis, the court concluded that it constituted a "designated terminal."[6]

REASONS FOR GRANTING THE PETITION

1. As the court of appeals recognized, its decision in this case is in conflict with the decision of the Ninth Circuit in *United States* v. *Atchison, Topeka and Santa Fe Railway Co.*, 525 F. 2d 1184, certiorari denied, 425 U.S. 992.[7] The Eighth Circuit in this case held that a "designated terminal" may be any intermediate rest point along a rail line where suitable food and lodging facilities are available; the Ninth Circuit in the *Santa Fe* case, by contrast, held that the term "designated terminal" was meant to refer to the terminals designated as the particular crew's home and away-from-home terminals or other terminals specifically designated for that crew and run in the collective bargaining agreement between the railroad and the employee representatives.[8]

---

[6] The court of appeals noted that Crystal City was the home or away-from-home terminal for at least one other Frisco crew assignment (*id.* at 9A), but it did not indicate what role, if any, this fact played in its analysis.

[7] While the court below stated that it "note[d] factual differences in these two cases" (App. A, *infra*, p. 21A), it did not delineate these differences, and we have not discerned any distinctions that could justify a difference in result.

[8] A third interpretation has been suggested in *United States* v. *Chesapeake and Ohio Railway Co.*, 399 F. Supp. 480 (N.D. Ind.). In that case the court held that the term "designated terminal" meant more than "any place with suitable facilities chosen by the management." *Id.* at 483. It went on to suggest in dictum that "designated terminal" might be construed to include not only the home and away-from-home terminals for the particular crew involved, but all home and away-from-home terminals on a company's line for any crew and run, as designated in the collective bargaining agreements of that railroad.

We submit that the view of the Ninth Circuit—that the term "designated terminal" refers to one jointly designated through the collective bargaining process rather than one unilaterally designated by the carrier—better reflects the congressional intent behind the Hours of Service Act. The Senate Report recognized that "designated terminal" was not defined in the statute; it looked instead to the collective bargaining process to give meaning to the definition of the term. As the Report stated (S. Rep. No. 91-604, *supra,* at 8):

> The phrase "designated terminals" in section 1(b)(3) (A) and (B) is intended to have that meaning commonly recognized in the railroad industry. The committee is advised that collective bargaining agreements provide a commonly understood definition for this term. As a minimum the committee intends that the term should mean generally a place where suitable food and lodging are available for employees.

The reference to the collective bargaining agreements for the definition of "designated terminal" reflected the understanding of the railroad industry itself. The chief spokesman for the railroad industry at the hearings on the legislation testified before the Senate Committee that the term "designated terminal," while not defined in the proposed legislation, "has significance in relation to the provisions of collective bargaining agreements and refers to terminals that are 'designated' in such agreements."

Hearings on S. 1938 Before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, 91st Cong., 1st Sess. 122–123 (1969).

Because the railroads perceived that reference to the collective bargaining agreements would significantly restrict their choice of locations for releasing crews, free from the requirements of the Hours of Service Act, the railroad industry unsuccessfully sought to substitute for "designated terminal" the words "place where reasonable facilities for food and rest are available to employees." *Hearings on S. 1938, supra,* at 127–128, 153. The industry spokesman supported that proposal by stating (*id.* at 122–123):

> Our view is that any place where reasonable facilities for food and rest are available to employees should qualify as the kind of place at which interim rest periods—of suitable length—should not count as time on duty. This concept should be substituted for the technical term "designated terminal." Food and rest are the essential physical requirements for a meaningful rest period, and they may well be obtainable at places that are not "designated" in collective bargaining agreements.

Congress refused to adopt the railroads' proposed expansion of the class of permissible rest locations and instead retained the term "designated terminal" with its implied adoption of the terminals specified in the collective bargaining agreements. The rejection of the railroads' proposed amendment—which the court of appeals has in effect reinstated—is a further indication that Congress did not intend the Act to have the

meaning the court of appeals now ascribes to it.[9] See *United States* v. *Seaboard Air Line R. Co.,* 361 U.S. 78, 82–83.

The fundamental purpose of the Hours of Service Act is to promote safety in railroad operations. *Atchison, Topeka and Santa Fe Ry.* v. *United States,* 244 U.S. 336, 342. For this reason, the Court has recognized that the Act "is remedial and in the public interest, and should be construed in the light of its humane purpose." *Id.* at 343. As the Ninth Circuit indicated, this salutary purpose is best served at rest periods at known locations designated in the collective bargaining agreement, where the crewmen will be in familiar surroundings and can establish regular accommodations for rest. See *United States* v. *Atchison, Topeka and Santa Fe Railway Co., supra,* 525 F. 2d at 1190. Typically, the home and away-from-home terminals specified in collective bargaining agreements are approximately one day's run apart. Under the Ninth Circuit's view, a crew will thus gen-

[9] The last sentence in the passage from the Senate Committee Report quoted above (p. 11)—that "[a]s a minimum" the term "designated terminal" "should mean generally a place where suitable food and lodging are available for employees" (S. Rep. No. 91-604, *supra,* at 8)—does not indicate that Congress accepted the railroad industry's proposal. That statement merely reflects the congressional intention that only those terminals that are designated in the collective bargaining agreements and *also* meet this minimum standard would qualify under the Act as "designated terminals." See *United States* v. *Atchison, Topeka and Santa Fe Railway Co., supra,* 525 F. 2d at 1189.

erally arrive at a "designated terminal" ready for a meaningful period of rest, rather than being released for a lengthy holding period at some location along the line selected by the railroad. We submit that the goal of safety is not as well served by the interpretation of the Eighth Circuit, under which the railroads may release employees at any marginally adequate rest stop along the line, regardless of whether the crew needs or can properly utilize a period of rest at that point.

2. Whatever the ultimate interpretation adopted, the conflict over the meaning of the term "designated terminal" should be resolved by this Court. Not only does the dispute affect the rules governing the operation of the national railroad system, which should be uniform in all the circuits, but the uncertainty created by the conflict has had and continues to have a substantial deleterious effect on the administration of the Hours of Service Act.

The Federal Railroad Administration, which is responsible for administering the Hours of Service Act, has interpreted the term "designated terminal" in the manner adopted by the Ninth Circuit in *Santa Fe*. 42 Fed. Reg. 27597. Accordingly, in carrying out its responsibility of investigating and filing civil penalty claims for violations of the Act throughout the nation, the FRA has pursued complaints involving the release of crews at points other than their home or away-from-home terminals, where the release has resulted in the crews' remaining on duty for more than a continuous 12-hour period. The FRA now has

pending more than 30 cases—involving a total of approximately 700 claims—that turn solely on the "designated terminal" issue. Since July 1976, the FRA has received and forwarded for collection a total of 1,171 claims involving this issue. The claims raising the question of the interpretation of the term "designated terminal" constitute approximately one-third of all the claims filed with the FRA alleging a violation of the Hours of Service Act.

The present conflict among the circuits makes collection of these claims uncertain and makes informal resolution of the claims very difficult. Nor is it likely that the burden on the FRA and the courts will abate since the lack of an authoritative resolution of the issue can only encourage the railroads to continue to operate under procedures at variance with the interpretation of the Act accepted by the FRA.

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This Court should therefore take this occasion to resolve the conflict among the circuits on this issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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SEPTEMBER 1978.

APPENDIX A

United States Court of Appeals for the Eight Circuit

No. 77-1533

UNITED STATES OF AMERICA, APPELLANT
v.
ST. LOUIS-SAN FRANCISCO RAILWAY CO., APPELLEE

Appeal from the United States District Court for the Eastern District of Missouri

Submitted: December 15, 1977
Filed: March 1, 1978

Before LAY and BRIGHT, Circuit Judges, and SCHATZ, District Judge.[1]

BRIGHT, *Circuit Judge.*

The United States brought this action against the St. Louis-San Francisco Railway Company (Frisco) seeking to recover civil penalties for violations of the [Railroad] Hours of Service Act (Act), 45 U.S.C. §§ 61-64b (1970). The district court entered a judgment of dismissal,[2] and the United States brings this timely appeal. We affirm.

The parties stipulated all of the facts, which we summarize. At 6:00 a.m. on November 16, 1973, the

[1] Albert G. Schatz, United States District Judge, District of Nebraska, sitting by designation.

[2] The Honorable James H. Meredith, Chief Judge, United States District Court for the Eastern District of Missouri. The district court opinion is reported at 431 F. Supp. 735 (E.D. Mo. 1977).

four-member crew of Frisco Train No. 822 reported for duty at the crew's "home" terminal, namely, Chaffee, Missouri. The train departed Chaffee at 8:00 a.m. for a "through" trip to the St. Louis, Missouri, terminal at Lindenwood Yard, 138 miles north of Chaffee. St. Louis was the "away-from-home" terminal for the crew.[3]

At 10:40 a.m., the train arrived at Crystal City, Missouri, which is 105 miles north of Chaffee and 33 miles south of St. Louis. Because Lindenwood Yard at St. Louis was congested and could not accommodate the train, Frisco elected to release the four crew members from duty at 11:45 a.m. at Crystal City. Adequate facilities for food and lodging were available to the crew at Crystal City.

Crystal City was not a "home" or "away-from-home" terminal for this crew or for other crews assigned to trains operating from Chaffee to St. Louis, nor was it so specified or indicated in any collective bargaining agreement or bulletin for crews assigned to trains operating from Chaffee to St. Louis. However, Crystal City, according to provisions of the collective bargaining agreements did serve as a "home" or "away-from-home" terminal for another Frisco train crew assignment.

Following a relief of nine hours and fifteen minutes, the crew of Train No. 822 returned to duty at 9:00 p.m.[4] The train departed Crystal City at 10:15 p.m. and arrived at the "away-from-home" terminal, Lindenwood Yard, at 1:25 a.m. on November 17, 1973. At this time, a total of nineteen hours and

[3] We discuss these terms, "home" and "away-from-home" terminal, *infra*.

[4] Pursuant to provisions of collective bargaining agreements, the members of the crew were paid for the period they spent at Crystal City.

twenty-five minutes had elapsed from the time the crew had commenced duty at Chaffee.

The Government in this action contends that Frisco violated the Hours of Service Act by requiring the four crew members to remain on duty for more than twelve hours. It counts the time spent by the crew at Crystal City as duty time under the Act. Frisco argues to the contrary. On this appeal, we must determine whether Crystal City constituted a "designated terminal" under the provisions of the Act. If it does, the time spent there by the crew is not deemed "duty" time and Frisco is not in violation of the Act.

I

Under 45 U.S.C. § 62(a)(1),[5] it is unlawful for a common carrier, such as Frisco, to require or permit an employee who has been continuously on duty for twelve hours to go on duty or to continue on duty until the employee has had at least ten consecutive hours off duty. What constitutes time on duty is determined by 45 U.S.C. § 61(b)(3).[6] Interim periods for rest at

[5] 45 U.S.C. § 62(a)(1) provides in part:

"(a) It shall be unlawful for any common carrier, its officers or agents, subject to sections 61 to 64b of this title—

"(1) to require or permit an employee, in case such employee shall have been continuously on duty for [twelve] hours, to continue on duty or to go on duty until he has had at least ten consecutive hours off duty * * *."

[6] U.S.C. § 61(b)(3) provides in part:

"(b) For the purposes of sections 61 to 64b of this title—

* * * * *

"(3) Time on duty shall commence when an employee reports for duty and terminate when the employee is finally released from duty, and shall include:

"(A) Interim periods available for rest at other than a designated terminal;

"(B) Interim periods available for less than four hours rest at a designated terminal[.]"

other than a designated terminal constitute "time on duty" for purposes of the Act. The parties agree that an interim period available for rest for four hours or more at a "designated terminal" does not constitute "time on duty" under the Act. Hence, if the Government establishes Crystal City as a place "other than a designated terminal," the crew must be deemed on duty for more than seven hours beyond the twelve-hour duty time permitted by the Act and the Railroad must accordingly be deemed guilty of violations of that Act. But if Crystal City qualifies as a designated terminal under the stipulated facts, the crew would be deemed on duty for purposes of the Act for less time than twelve hours and the facts would not establish any violation by the Railroad.

The Government interprets the term "designated terminal," as used in section 61(b)(3)(A), to mean a railroad terminal established in or under a collective bargaining agreement as the "home" terminal or "away-from-home" terminal for the particular crew assignment, provided that the terminal has adequate facilities for food and lodging. According to the Government, because Crystal City was not the "home" or "away-from-home" terminal for this particular crew assignment, it was not a "designated terminal" under the Act.

II

The statute does not define the term "designated terminal." In its report on the 1969 legislation,[7] the

[7] Congress introduced the term "designated terminal" into § 1(b)(3) of the Hours of Service Act, 45 U.S.C. § 61(b)(3), by the Act of December 26, 1969, Pub.L. 91–169, 83 Stat. 463 (1969), which was designed to update the safety provisions of the Hours of Service Act, originally enacted in 1907.

Senate Committee on Commerce stated with respect to the provision now in question:

> The phrase "designated terminals" in section 1(b)(3)(A) and (B) is intended to have that meaning commonly recognized in the railroad industry. The committee is advised that collective bargaining agreements provide a commonly understood definition for this term. As a minimum the committee intends that the term should mean generally a place where suitable food and lodging are available for employees. [S. Rep. No. 91–604, 91st Cong., 1st Sess., 1969 U.S. Code Cong. & Adm. News 1640.]

Although the Senate Committee refers to collective bargaining agreements as providing the commonly understood definition of this term, the "stipulation" of the parties indicates that collective bargaining agreements between railroads and railroad unions rarely use the term "designated terminal." The parties stipulated as follows:

> The collective bargaining agreements representing those crafts or classes of employees whose work involves them in the actual operations of trains, use the phrase "designated terminal" in only one instance in each of said agreements. Such agreements do, however, contain a number of references to "designated home terminal" and "away-from-home terminal".

Portions of six collective bargaining agreements involving major railroads were stipulated into evidence. In one of the agreements, the term "designated terminal" is used in conjunction with "home" and "away-from-home" terminals for the purpose of allocating crew assignments. Otherwise, railroad terminals are referred to as "home" or "away-from-home" terminals or as "established" for various purposes, for example, to determine the rate of pay for "held" time. The record establishes neither a common

definition nor a consistent use of the term "designated terminal" in railroad collective bargaining agreements.

The Government contends that testimony given by various railroad industry representatives and others before the subcommittee of the Senate Committee on Commerce, and before a House Committee considering a parallel bill, shows that the industry understood the statutory term of "designated terminal" to mean a "home" terminal or an "away-from-home" terminal. The Government relies primarily on testimony given by Mr. R. R. Manion, then vice president of the Association of American Railroads (AAR). In that testimony, Mr. Manion criticized the use of the term "designated terminal" in the new legislation, and interpreted that language to refer "to terminals that are 'designated' in [collective bargaining] agreements."[8]

[8] The Government quotes the following testimony of Mr. Manion:

"The pending bills provide that interim periods available for rest shall be counted as time on duty except those lasting 4 or more hours at what are referred to as 'designated terminals.' The term 'interim period available for rest' is not defined, nor is the term 'designated terminal.'

"The existing hours of service statute contains no provision relating to interim rest periods. The Federal courts, in construing the law, have determined that respite periods that are of sufficient duration and are afforded under suitable circumstances should not be counted as time on duty, and that the adequacy of a given rest period is a question of fact in light of all the circumstances. Periods of 2 hours, for example, have been held to be sufficient to be excluded from duty time.

"The term 'designated terminal' is used in the bills to identify the kind of place at which interim rest periods of appropriate length may be excluded from duty time and is distinguished from other than designated terminals' where all interim periods for rest are counted as time on duty.

"*The term has significance in relation to the provisions of collective bargaining agreements and refers to terminals that are 'designated'* in such agreements. It does not terminate the question whether a given place is one at which suitable rest can be obtained.

"*Our view is that any place where reasonable facilities for food and rest are available to employees should qualify as the kind of place at which interim rest periods—of suitable length—should not count as time on duty. This concept should be substituted for the technical term 'designated terminal.'* Food and rest are the essential physical requirements for a meaningful rest period, and may well be obtainable at places that are not 'designated' in collective bargaining agreements."

Hearings on S. 1938 before the Subcomm. on Surface Transportation of the Senate Committee on Commerce, 91st Cong., 1st Sess., 138 (1969) (emphasis supplied). Other portions of Mr. Manion's testimony relied on by the Government appear at Hearings on S. 1938, *supra* at 122–23 and Hearings on H.R. 8447 before the House Comm. on Interstate and Foreign Commerce, 91st Cong., 1st Sess. 135 (1969).

The AAR also advanced an amendment to the proposed legislation that would delete the words "other than a designated terminal" and would substitute the words "a place where reasonable facilities for food and rest are not available for employees." Hearings on S. 1938, *supra* at 153. The Senate did not adopt the AAR proposal.

The comments and proposed amendments of industry representatives offer little assistance in determining Congressional intent. This sort of evidence often reflects an industry's construction of proposed legislation, taken in the worst light from that industry's standpoint. After examining the testimony referred to by the Government, the amendment proposed by the AAR, and other legislative history of the provision in question, [we agree with the district court that the legislative history is unclear as to the meaning of the term "designated terminal."] The strongest evidence of Congressional intent must come from the

language of the Act and from comments by the Congress.

The excerpt from the Senate Committee report, quoted at p. 5 *supra,* carries substantial weight with respect to the Congressional intent. Though the Congress did not define the term "designated terminal," leaving the meaning to collective bargaining agreements, the Committee report emphasized that the term should mean generally "a place where suitable food and lodging are available for employees."

The statute provides for "interim periods" of rest. This term contemplates an intermediate stopping place for rest between the place where an employee "reports for duty" and that where the employee is "finally released from duty."[9] Neither the "home" nor the "away-from-home" terminal was an interim point on the train journey here in question, although a "home" or "away-from-home" terminal could constitute an interim point on other train runs. We construe the statutory term "designated terminal" as connoting an *interim* rest point such as Crystal City, not necessarily limited to "home" and "away-from-home" terminals as those terms are used in collective bargaining agreements.

In reaching this conclusion, we are mindful that the purpose of the Act is to promote the safe operation of trains. *Atchison, Topeka & Santa Fe Railway Co.* v. *United States,* 244 U.S. 336, 342 (1917); *Chicago & Alton Railroad Co.* v. *United States,* 247 U.S. 197, 199–200 (1918). The interpretation offered by appellant United States does not enhance safety but serves only to burden efficient railroading.[10]

[9] The phrases "reports for duty" and "finally released from duty" as used in 45 U.S.C. § 61(b)(3) determine, respectively, the points in time when an employee's duty time commences and terminates. The stipulation of the parties does not state that crew members were finally released from duty upon their arrival at Lindenwood Yard at St. Louis. However, that the crew was finally released there is evident from the computations of duty time advanced by the parties.

III

The burden of establishing a violation of the Act by Frisco rested upon the United States. The applicable collective bargaining agreement did not use the language "designated terminal." Frisco released the crew at an interim point in the train journey, Crystal City, for a rest period of more than four hours. The parties have stipulated that adequate facilities for food and lodging were available for the crew at Crystal City. Also, they have stipulated that for at least one Frisco crew assignment, Crystal City is specified under a collective bargaining agreement as a "home" or "away-from-home" terminal. Under these circumstances, the Government failed to prove any violation and we affirm the dismissal of the action.

We recognize that the Ninth Circuit has applied a rationale contrary to ours in deciding *United States* v. *Atchison, Topeka & Santa Fe Railway Co.*, 525 F. 2d 1184 (9th Cir. 1975), *cert. denied*, 425 U.S. 992 (1976). We do note factual differences in these two cases. In any event, we believe that Chief Judge Meredith has reached a proper result in this case by giving the statute a reading which accords with congressional intent.

Affirmed.

A true copy.
Attest:

Clerk, U.S. Court of Appeals,
Eighth Circuit.

[10] According to comments of counsel at oral argument, Frisco could have avoided the Government's charge of violating the Act by transporting the crew 33 miles to St. Louis to rest for at least four hours and then transporting the crew back to Crystal City to continue the movement of the train into the St. Louis yards.

APPENDIX B

United States Court of Appeals for the Eighth Circuit

SEPTEMBER TERM, 1977

77-1533

UNITED STATES OF AMERICA, APPELLANT
v.
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,
APPELLEE

Appeal from the United States District Court for the Eastern District of Missouri

This cause came on to be heard on appeal from an order of the United States District Court for the Eastern District of Missouri, appendix and briefs of the respective parties and was argued by counsel.

On consideration Whereof, it is now here ordered by this Court that the order of the said District Court is affirmed in accordance with the opinion of this Court.

MARCH 1, 1978.

A true copy.

Attest:

/s/ ROBERT C. TUCKER,
Clerk, U.S. Court of Appeals, 8th Circuit.

APPENDIX C

United States Court of Appeals for the Eighth Circuit

SEPTEMBER TERM, 1977

77-1533

UNITED STATES OF AMERICA, APPELLANT
v.
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,
APPELLEE

Appeal from the United States District Court for the Eastern District of Missouri

Petition of appellant for rehearing filed in this cause having been considered, it is now here ordered by this Court that the same be, and it is hereby, denied.

APRIL 18, 1978.

APPENDIX D

United States District Court, Eastern District of Missouri, Eastern Division

No. 76–759C(1)

UNITED STATES OF AMERICA, PLAINTIFF

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, DEFENDANT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter was tried to the Court on stipulation of facts, exhibits, and briefs. Both parties have filed cross-motions for summary judgment.

Findings of Fact

1. This action was brought under the Hours of Service Act (hereinafter Act), 45 U.S.C. §§ 61 to 64b, inclusive, by the United States of America (hereinafter Government) against the St. Louis-San Francisco Railway Company (hereinafter Frisco), a Missouri corporation, which has offices and places of business in St. Louis, Missouri, seeking a $500 penalty for each of the four herein alleged violations of the Act, a total of two thousand dollars ($2,000), pursuant to 45 U.S.C. § 64a. Frisco was and is a common carrier by railroad, engaged in interstate commerce in the State of Missouri and elsewhere, and, as such, is subject to the Act and the jurisdiction of this Court. At all times the crew herein was engaged in the movement of property in interstate commerce.

2. At 6:00 a.m., on November 16, 1973, the crew of Frisco Train No. 822 (also known as Extra 909 North), a through train, reported for duty at its "home" terminal, namely, Chaffee, Missouri. The crew consisted of four men: J. T. Spencer, conductor; E. E. White and G. L. Crowder, brakemen; and W. N. Crank, engineer.

3. The train departed Chaffee at 8:00 a.m., for St. Louis, 138 miles north, a trip which is scheduled to be completed in five hours. St. Louis was the "away-from-home" terminal for this crew. The train arrived at Crystal City, Missouri, 105 miles north of Chaffee and 33 miles south of St. Louis, at 10:40 a.m. For reasons of railroad operating necessity as determined by Frisco management (St. Louis terminal could not accommodate the train and additional cars until space became available), all four crew members were released from duty at 11:45 a.m., at Crystal City, where adequate facilities for food and lodging were available to the crew. This release period extended from 11:45 a.m. until the crew was recalled to duty at 9:00 p.m., a period of nine hours and fifteen minutes. The four crew members departed Crystal City at 10:50 p.m. and arrived at their "away-from-home" terminal, Lindenwood Yard, St. Louis, Missouri, at 1:25 a.m., on November 17, 1973, a total of nineteen hours and twenty-five minutes after the time they first went on duty at Chaffee, the home terminal for this crew assignment. Pursuant to provisions of collective bargaining agreements between labor organizations and the Frisco, the members of the crew were paid for the period they spent at Crystal City along with the time they spent between Chaffee and Crystal City, and between Crystal City and St. Louis. There is no express language in the collective bargaining agreements be-

tween the labor organizations and the Frisco specifically prohibiting the release from duty at Crystal City. The collective bargaining agreements provide for methods of payment to crew members, if they are so released, and also provide for the use of the Crystal Motel, which was used by the crew herein.

4. Although Crystal City was a "home" or "away-from-home" terminal for at least one Frisco train crew assignment made from an extra board at the time the incident involved occurred, Crystal City is, and was, neither the "home" nor "away-from-home" terminal for this or other crews assigned to trains operating from Chaffee to St. Louis, nor was it so specified or indicated as such in any collective bargaining agreement or bulletined assignments for crews assigned to trains operating from Chaffee to St. Louis.

5. If the crew members had completed their trip between Chaffee and St. Louis as originally scheduled, without the interim period at Crystal City, under the applicable labor contracts, they would have been paid as follows:

Conductor	$55.65
Brakemen	51.51
Engineer	67.62

Because of the release for the interim period at Crystal City, the crew members were paid for the services on November 16th and 17th as follows:

Conductor	$112.47
Brakemen	101.10
Engineer	144.76

Under the applicable labor contracts, if after release of the crew at Crystal City, the crew was deadheaded to St. Louis, and after the congestion in the St. Louis terminal had cleared, another crew was deadheaded to Crystal City to move the train to St. Louis, the crew members would have been paid as follows.

Conductor	$117.52
Brakemen	105.88
Engineer	149.52

6. The trains, on occasions, are delayed in transit at intermediate points. The Government does not concede that Frisco had the right to release the involved crews at Crystal City.

7. Each member of the crew was, and is, a member of, or represented by, a labor organization: the engineer by the Brotherhood of Locomotive Engineers; the others by the United Transportation Union (hereinafter UTU). Accordingly, the rates of pay, rules, and working conditions of each were, and are, subject to the terms of collective bargaining agreements negotiated and administered by and between Frisco and their representative labor organizations, pursuant to to the Railway Labor Act, 45 U.S.C. §§ 151, et seq. If and when Frisco allegedly violates the agreed rates of pay, rules, or working conditions of any employee in the position of any of the men involved here, the prescribed avenue of relief under the collective bargaining agreement is the filing and processing of an appropriate claim or grievance, pursuant to the provisions of section 3 of the Railway Labor Act, 45 U.S.C. § 153. No claims or grievances have been filed on behalf of any man in the crew involved herein with regard to their release at Crystal City. The Federal Railroad Administration's investigation of the release of these particular crew members was initiated as the result of a December 4, 1973, letter from J. R. Snyder, National Legislative Director of UTU, the recognized bargaining agent for three members of this crew.

8. The Government has charged Frisco with violating the Act, alleging that it permitted the employees

involved to remain continuously on duty in excess of twelve hours contrary to 45 U.S.C. § 62(a), the pertinent portion of which provides as follows:

> *§ 62. Employees' hours of service—Limitations*
>
> (a) It shall be unlawful for any common carrier, its officers or agents, subject to sections 61 to 64b of this title—
>
> (1) to require or permit an employee, in case such employee shall have been continuously on duty for twelve hours, to continue on duty or to go on duty until he has had at least ten consecutive hours off duty * * * or
>
> (2) to require or permit an employee to continue on duty or to go on duty when he has not had at least eight consecutive hours off duty during the preceding twenty-four hours.

The following portion of 45 U.S.C. § 61 is relevant in determining the "time on duty":

> (3) Time on duty shall commence when an employee reports for duty and terminate when the employee is finally released from duty, and shall include:
>
> (A) Interim periods available for rest at other than a designated terminal;
>
> (B) Interim periods available for less than four hours rest at a designated terminal; * * *

It is agreed that "time on duty" does not include "interim periods available for rest" for four hours or more at a "designated terminal".

9. The collective bargaining agreements representing those crafts or classes of employees, whose work involves them in the actual operations of trains, use the phrase "designated terminal" in only one instance in each of said agreements. Such agreements do, however, contain a number of references to "designated home terminal" and "away-from-home terminal".

10. The Federal Railroad Administration has advised management that if, as a result of collective bargaining, Crystal City is agreed upon by management and labor as a "designated terminal" for this particular crew assignment, future action of the Frisco in relieving crews for four hours or more at Crystal City, as it did herein, would not be a violation of the Act.

11. The parties have stipulated that the issue to be decided is:

> Under the facts of this case was the release of the crew at Crystal City at a "designated terminal" within the meaning of the Hours of Service Act.

Conclusions of Law

1. In reviewing the legislative history of the Act, it is clear that the Congress was alerted to the possibility that the term "designated terminal" would prove troublesome, unless specifically defined. *Hearings on S. 1938 Before the Subcomm. on Surface Transportation of the Comm. on Commerce,* 91st Cong., 1st Sess. 193 (1969). Though the Congress failed to so define the term, the Senate Committee on Commerce did report that:

> The phrase "designated terminals" in section 1(b)(3) (A) and (B) is intended to have that meaning commonly recognized in the railroad industry. The committee is advised that collective bargaining agreements provide a commonly understood definition for this term. As a minimum the committee intends that the term should mean generally a place where suitable food and lodging are available for employees. *S. Rep. No. 91-604,* 91st Cong., 1st Sess., 1969 U.S. Code Cong. & Admin. News, p. 1960.

Despite the assurances by the Senate Committee on Commerce, this Court is unable to find any instance,

in either the local or national collective bargaining agreements submitted by the parties, wherein the term "designated terminal" is defined. Moreover, in the very few instances the term is used in the collective bargaining agreements, it is almost exclusively used in conjunction with the terms "home terminal" or "away-from-home terminal". Accordingly, it is clear that the advice given the Committee concerning the presence of a definition in the collective bargaining agreements was erroneous, that the term is undefined, and that it is used to refer to those "home terminals" and "away-from-home terminals" which are specifically listed in the collective bargaining agreements.

2. Plaintiff contends that based on the testimony given before the various House and Senate Committees, the term "designated terminal" has been defined as being those terminals which are designated as such in collective bargaining agreements. Specifically, plaintiff relies upon the testimony of R. R. Manion, then Vice-President, Operations and Maintenance Department, Association of American Railroads, and spokesman for the railroads in opposition to the legislation, who stated:

> The term "designated terminal" is used in the bills to identify the kind of place at which interim rest periods of appropriate length may be excluded from duty time and is distinguished from "other than designated terminals" where all interim periods for rest are counted as time on duty.
>
> The term has significance in relation to the provisions of collective bargaining agreements and refers to terminals that are "designated" in such agreements. It does not determine the question whether a given place is one at which suitable rest can be obtained.
>
> Our view is that any place where reasonable facilities for food and rest are available to employees should qualify as the kind of place at

> which interim rest periods—of suitable length—should not count as time on duty. This concept should be substituted for the technical term "designated terminal." Food and rest are the essential physical requirements for a meaningful rest period, and may well be obtainable at places that are not "designated" in collective bargaining agreements. Hearings on S. 1938, supra, at 138.

While this testimony does seem to define the term and strengthen the plaintiff's position, this support is substantially weakened when it is noted that this testimony is included in a record wherein the vast majority of testimony is ambiguous and confusing, at best, with regard to the term "designated terminal." Additionally, plaintiff notes that Congress failed to incorporate Manion's proposal into the Act. Though true, this does not change the fact that Congress failed to accept any proposal which specifically defined the term. Actually, the only step taken by Congress to specifically define the term was to set forth minimum requirements therefor. The plaintiff relies upon the testimony of R. R. Manion, then Vice-President, Operations and Maintenance Department, Association of American Railroads, and spokesman for the railroads in opposition to the legislation, who stated:

> The term "designated terminal" is used in the bills to identify the kind of place at which interim rest periods of appropriate length may be excluded from duty time and is distinguished from "other than designated terminals" where all interim periods for rest are counted as time on duty.
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3. The Act " * * * is remedial and in the public interest, and should be construed in the light of its humane purpose", *Atchison, Topeka, & Santa Fe Ry.* v. *United States,* 244 U.S. 335, 343 (1917), and the purpose of the Act

> * * * is to bring up to today's safety requirements and operating conditions the provisions established in 1907 * * * prohibiting railway employees engaged in or connected with the

> movement of trains from being required or permitted to be or remain on duty beyond a maximum of 16 hours, and specifying certain hours they must have off duty. *S. Rep. No. 91-604,* 91st Cong., 1st Sess., 1969 U.S. Code Cong. & Admin. News, p. 1636.

Here, the crew was provided with suitable food and lodging after only three hours and forty-five minutes on duty, the crew was compensated for their stay at Crystal City in accordance with the terms of the applicable collective bargaining agreement, and no claims or grievances have been filed on behalf of any man in the crew. Even though Crystal City was not specifically designated as a "home terminal", "away-from-home terminal", or "designated terminal" in the collective bargaining agreements, it is abundantly clear that the crew was satisfied with the terms and conditions of their stay at Crystal City, and that the humane purpose of the Act was accomplished. Accordingly, Crystal City was a designated terminal within the meaning of the Act, and a judgment will be entered in favor of the defendant at the cost of the plaintiff.

4. The Court is aware of the fact that in reversing the United States District Court for the Northern Disrict of California, *United States* v. *Atchison, Topeka & Santa Fe Ry.*, 363 F. Supp. 644 (1973), the Ninth Circuit Court of Appeals reached a contrary decision in a similar situation, *United States* v. *Atchison, Topeka & Santa Fe Ry.,* 525 F. 2d 1184 (9th Cir. 1975), and that the Supreme Court denied certiorari, 425 U.S. 992 (1976). However, it is the opinion of this Court that in order to accomplish the purposes of the Act, the decision reached above is proper.

Dated this 3rd day of May, 1977.

/s/ JAMES H. MEREDITH,
United States District Judge.

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